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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/645,186	08/24/2000	Donald Fedyk	10360-062001	4310
32836	7590	02/28/2006	EXAMINER	
GUERIN & RODRIGUEZ, LLP 5 MOUNT ROYAL AVENUE MOUNT ROYAL OFFICE PARK MARLBOROUGH, MA 01752			BLOUNT, STEVEN	
			ART UNIT	PAPER NUMBER
			2668	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/645,186	FEDYK ET AL.	
	Examiner	Art Unit	
	Steven Blount	2668	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 2, 5, 8, 13, 14, 20, 21, 24, 27, 32, 33, 39, 40, 43, 46, 51, 52, 53, 54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1 - 2, 5, 8, 13, 14, 20, 21, 24, 27, 32, 33,39, 40, 43, 46, 51, 52, 53, 54.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, 8, 13, 14, 20, 21, 24, 27, 32, 33, 39, 40, 43, 46, 51, 52, 53, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 5,687,167 to Bertin et al in view of U.S. Patent Application 20020156914 to Lo et al.

With regard to claims 1, 13, 20, 32, 39, and 53, Bertin et al teach finding the best path through a network wherein the best path has the fewest number of links (ie, hops, see col 11 lines 24+) and then preempting other existing connections "in order to allow the new connection to be established on the link" wherein the new and old links are assigned individual priority numbers (see col 14 lines 5+). Bertin et also teaches preempting only lower priority requests. See col 14 lines 26+. While Bertin et al does discuss the consideration of the number of hops in forming the initial connection (see col 11 lines 34+), Bertin et al does not teach taking this into consideration when preempting the other connections in order to add bandwidth to the existing connection, as discussed above.

Lo et al teaches, in a similar manner, adjusting the bandwidth by allocating resources amongst different data connections. Lo et al also teaches that:

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“These increases and decreases in bandwidth allocation are restricted to remain within an operating range, which is determined by the user-defined policies (or SLAs).”

See page 5, par 73. See also the LBWA description in par 85.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have placed an operating range (ie, cost limiting factor) on the system of Bertin in light of the teachings of Lo et al in order to prevent the allocation of bandwidth from another connection when the other connection is too costly (ie, in Bertin et al, when the other connection would have too many hops to justify the use of this additional bandwidth for the connection in this manner).

It is noted that Lo et al teaches carrying out the above process in an MPLS environment, and that the management unit described in par 48 of Lo et al operates under the control of software driven processes.

With regard to claims 5, 14, 24, 33, and 54, see the use of a topology database in col 8 lines 45+ of Bertin et al.

With regard to claims 8, 27, 46, see the discussion of MPLS above.

With regard to claims 21 and 40, note that bandwidth is allocated in Bertin et al.

With regard to claims 51 – 52, see the service controller and network controller in Lo et al.

3. Applicants remarks are moot in view of the new grounds of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

SB


2/22/06

